



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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CITY ATTORNEY ISSUES LEGAL OPINION REGARDING WRITE-IN CANDIDATES FOR SAN DIEGO CITY SCHOOL BOARD

San Diego, CA— San Diego's City Charter and Municipal Code election laws will govern the issue of a write-in candidate's ability to advance from the primary to the general election in the race for a seat on the Board of Education of the San Diego Unified School District.

In a legal opinion issued today in response to a request from the San Diego City Clerk, the San Diego City Attorney's Office opined that local law – not state law – will apply to write-in candidates even though the School Board election is consolidated with other primary races.

The issue arose because next month voters in District "D" of the San Diego Unified School District will be asked to vote for a candidate to serve as their representative on the District's five-member School Board. Only one candidate has qualified to have his name placed on the June primary ballot. However, at least one other candidate reportedly is gathering signatures by a May 20, 2008 deadline to attempt to qualify as a write-in candidate.

In applying local law to write-in candidates, a write-in candidate who qualifies for the primary ballot may advance to the November runoff election if he garners a *single vote* and merely places among the top two vote-getters in the June Primary. If state law were to apply the write-in candidate not only must place among the top two, but would need to gather a much larger number of votes to advance to the November election (2,723 votes, in the case of District "D").

The City Attorney further opined that

the San Diego City Charter and Municipal Code were expressly intended to provide a complete and adequate procedure for School Board elections. The Legislature expressly stated that the write-in law was intended to apply to general law cities, not a Charter city. Additionally, applying the state law to a race with two different pools of voters in a primary and a general election would raise significant constitutional issues. If the state law were to apply to the School Board race, it would have a profound and tortured impact, defying local law and state legislative intent.

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The legal opinion also provides background as to why the City Attorney's Office had responsibility for issuing the legal opinion:

Our Office has been asked by the City Clerk's Office to render an opinion on this issue. Yet, as set forth above, the County Registrar of Voters has responsibility for administering School Board elections. Because the City Attorney's Office does not advise the School Board or the Registrar of Voters, it was initially unclear whether our office would be the proper entity to issue this opinion. However, because "elections are still governed by" the San Diego City Charter and San Diego Municipal Code to some degree (See Clerk's Memo, cited above) and because we are informed by the City Clerk that the Registrar asked the City Clerk to resolve the issue, we provide this opinion. We note that we have had discussions with counsel for the School District and County Counsel to ensure that our office is the appropriate entity to do so.

To view the legal opinion, *School Board of Elections: Candidate Qualifications and Governing Law*, visit www.sandiegocityattorney.org, click "Significant Reports and Legal Documents."

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